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**In the Supreme Court**

OF THE

**United States**

U. S. - Supreme Court, U. S.

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OCTOBER TERM, 1941

**No. 10 92**

CITY OF OAKLAND, a Municipal Corporation,  
*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

**PETITION FOR WRIT OF CERTIORARI  
To the United States Circuit Court of Appeals  
for the Ninth Circuit  
and  
SUPPORTING BRIEF**

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### PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals  
for the Ninth Circuit

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*To the Honorable Harlan Fiske Stone, Chief Justice of  
the United States, and the Associate Justices of the  
Supreme Court of the United States:*

Your petitioner respectfully shows:

#### I.

#### SUMMARY STATEMENT OF THE MATTER INVOLVED.

The matter involved herein is the validity of a judgment rendered without either process, or appearance, or opportunity to defend—of a judgment that preceded process by a day.

This is an action at law brought in the United States District Court by the United States of America, respondent herein, at the instance of the Secretary of War, against City of Oakland, petitioner herein, to condemn a portion of the petitioner's municipally owned and operated waterfront lands, with the wharves, warehouses and other waterfront improvements thereon (Tr. 2).

The Complaint in Condemnation (Tr. 2) was accompanied by a Declaration of Taking (Tr. 14), and by a deposit of the estimated compensation (Tr. 16).

On the same day, upon which the above-mentioned documents were filed and said deposit made, namely, January 15, 1941 (Tr. 13, 16, 24), and without any process, or appearance, or any opportunity whatever given to the petitioner herein to be heard, the District Court rendered a final judgment of condemnation (Tr. 19), finally disposing of all judicial issues in the proceeding, except only the issue as to the amount of compensation.

On the following day (Tr. 19), namely, January 16, 1941, summons (Tr. 16) was served on the petitioner herein, in which summons the petitioner was advised (Tr. 17, 18) that it had thirty days within which "to appear and show cause why" its property "should not be condemned as prayed for in the complaint". The District Court directed (Tr. 24) that a certified copy of the judgment of condemnation be served with the summons. Thus, when the petitioner was served, it was advised, in effect, that, while it had thirty days within which to show cause why its property should not be



condemned, "here is a certified copy of the final judgment of condemnation rendered against you yesterday".

The petitioner's motion to vacate the judgment (Tr. 25), to the end that it might be given an opportunity to be heard on the judicial issue as to whether or not its property should be condemned, was denied by the District Court (Tr. 30), the order of denial being accompanied by a written opinion (Tr. 30).

The petitioner having appealed to the Circuit Court of Appeals from the order denying the motion to vacate, and from the judgment, the order and judgment were affirmed by the Circuit Court of Appeals (Tr. 65), the judgment of affirmance being accompanied by a written opinion (Tr. 52). The petitioner's petition for rehearing was denied.

This petition is presented for the purpose of securing a review by this Court of the judgment of the Circuit Court of Appeals, affirming the said order and judgment of the District Court.

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## II.

### STATEMENT OF BASIS OF THIS COURT'S JURISDICTION.

The judgment sought herein to be reviewed is the judgment of the United States Circuit Court of Appeals for the Ninth Circuit (Tr. 65), affirming the judgment of the District Court (Tr. 19), in an eminent domain proceeding, condemning property belonging to the petitioner herein, and affirming the order (Tr. 30) of the District Court denying the petitioner's motion to vacate said judgment (Tr. 25).

The judgment of the Circuit Court of Appeals was entered January 14, 1942 (Tr. 65). The petitioner's petition for a rehearing was denied on February 18, 1942 (Tr. 66), on which last mentioned date the judgment became final.

This Court's jurisdiction is sustained by Section 240 of the *Judicial Code* (28 U. S. Code, Sec. 347).

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### III.

#### THE QUESTIONS PRESENTED.

The single question presented relates to the validity of the District Court's final judgment of condemnation, rendered on the day the action was commenced, without process, or appearance, or any opportunity whatever to defend.

This single question may be segregated, and stated in its separate parts, as follows:

(1) Is *any* judgment valid that is rendered against a party, without either process, or appearance, or opportunity to appear and to defend;

(2) Does any Act of Congress purport to authorize the District Court to render any judgment in an eminent domain proceeding, without notice to the defendant or before trial;

(3) Is the rendition of such a judgment contrary to express Congressional mandate contained in the conformity statutes; and,

(4) Does due process require that a property owner be given an opportunity to be heard before he is deprived of his property in an eminent domain proceeding.

## IV.

## REASONS RELIED ON FOR ALLOWANCE OF WRIT.

It is respectfully submitted that there are three special, important and sufficient reasons for the allowance of the writ prayed for herein:

(1) It is the accepted and usual course of a judicial proceeding that a party defendant shall be served with process *today*, and that judgment shall be rendered against him *tomorrow*, if at all; the Circuit Court of Appeals has sanctioned herein a complete departure by the District Court from such usual and accepted course—a departure so basic that, while the petitioner was served with process *today*, judgment was rendered against it *yesterday*; such a departure, we respectfully submit, calls for an exercise of this Court's power of supervision;

(2) The decision by the Circuit Court of Appeals that the judgment, rendered without either process, or appearance, or an opportunity to defend, is a valid judgment, is in direct conflict with all applicable decisions, of which we are advised, of all courts of all civilized people, including the decision by this Court in the leading case of *Windsor v. McVeigh* 93 U. S. 274;

(3) If it be assumed that, because this is a proceeding in eminent domain, prosecuted by the United States with the aid of a declaration of taking, the question as to the right of the property owner to be heard, before he is deprived of his property by a final judgment of condemnation, is distinguishable from a defendant's right to be heard in other judicial proceedings, then we re-

spectfully submit that this is an important question of federal law, which has not been, but should be, settled by this Court.

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Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of the case numbered and entitled on its docket, No. 9801, City of Oakland, a municipal corporation, Appellant, v. United States of America, Appellee, to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment of said Circuit Court be reversed by this Court, and for such other and further relief as may be proper.

Dated, Oakland, California, March 23, 1942.

CHARLES A. BEARDSLEY,  
W. REGINALD JONES,  
*Counsel for Petitioner.*

